

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

ONIS CARRABINE POTTER,

No. 2:23-cv-2136 CKD P

Petitioner,

v.

ORDER AND

STATE OF IDAHO,

FINDINGS AND RECOMMENDATIONS

Respondent.

Petitioner, a Sacramento County Jail pretrial detainee proceeding pro se, has filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 along with an application to proceed in forma pauperis. Examination of the in forma pauperis application reveals that petitioner is unable to afford the costs of suit. Accordingly, the application to proceed in forma pauperis will be granted. See 28 U.S.C. § 1915(a).

Under Rule 4 of the Rules Governing Section 2254 Cases, the court must review all petitions for writ of habeas corpus and summarily dismiss any petition if it is plain that the petitioner is not entitled to relief. The court has conducted that review.

Petitioner claims that he is being held on a warrant originating from Idaho and is the subject of extradition proceedings in the Superior Court of Sacramento County. It appears that petitioner challenges the extradition proceedings, but petitioner's claims do not make sense and petitioner fails to point to anything suggesting he is in custody in violation of federal law which

1 he must do for this court to hear his habeas challenge. See 28 U.S.C. § 2254(a) (court may
2 entertain petition for writ habeas corpus filed by a state detainee only on the ground that he is in
3 custody in violation of federal law). Furthermore, to obtain habeas relief, petitioner must exhaust
4 all state court remedies available to him, 28 U.S.C. § 2254(b)(1), and it appears petitioner has not
5 done that.

6 For these reasons, the court will recommend that petitioner's petition for writ of habeas
7 corpus be summarily dismissed.

8 Accordingly, IT IS HEREBY ORDERED that:

9 1. Petitioner's request for leave to proceed in forma pauperis (ECF No. 2) is granted; and
10 2. The Clerk of the Court assign a district court judge to this case.

11 IT IS HEREBY RECOMMENDED that petitioner's petition for a writ of habeas corpus
12 be summarily dismissed.

13 These findings and recommendations are submitted to the United States District Judge
14 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
15 after being served with these findings and recommendations, petitioner may file written
16 objections with the court. Such a document should be captioned "Objections to Magistrate
17 Judge's Findings and Recommendations." In his objections petitioner may address whether a
18 certificate of appealability should issue in the event he files an appeal of the judgment in this
19 case. See Rule 11, Federal Rules Governing Section 2254 Cases (the district court must issue or
20 deny a certificate of appealability when it enters a final order adverse to the applicant). Where, as
21 here, a habeas petition is dismissed on procedural grounds, a certificate of appealability "should
22 issue if the prisoner can show: (1) 'that jurists of reason would find it debatable whether the
23 district court was correct in its procedural ruling,' and (2) 'that jurists of reason would find it
24 debatable whether the petition states a valid claim of the denial of a constitutional right.'" Morris
25 v. Woodford, 229 F.3d 775, 780 (9th Cir. 2000) (quoting Slack v. McDaniel, 529 U.S. 473, 484

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1 (2000)). Petitioner is advised that failure to file objections within the specified time may waive
2 the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

3 Dated: October 12, 2023



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CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

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